

DAILY BUSINESS REVIEW

VERDICTS & SETTLEMENTS

\$6.66 million to builder in Union Carbide asbestos case

Case: William P. Aubin v. Union Carbide Corp. et al.

Case no: 08-68233-CA-08

Description: Negligence

Filing date: Nov. 6, 2008

Trial dates: May 3-19, 2010

Jury award: \$6.66 million

Judge: Miami-Dade Circuit Judge Joseph Farina

Plaintiff attorneys: Juan P. Bauta II and Jordan Kirby, Ferraro Law Firm, Coral Gables

Defense attorneys: Michael G. Terry, Hartline Dacus Barger Dreyer & Kern, Corpus Christi, Texas; Colin K. Kelly, Alston & Bird, Atlanta.

Details: Longtime home-building contractor William P. Aubin, a prominent Key Biscayne resident, was 57 when he was diagnosed with a rare and aggressive form of cancer in 2008. The pain he would suffer, along with an enlarged belly and lost appetite, would be caused by peritoneal mesothelioma, which would build up fluid and put pressure on his internal organs.

To find the cause, Aubin would have to look back 20 to 50 years to trace his initial exposure to asbestos. While in high school, his family left Key Biscayne for Sarasota, where he and his father built nearly 70 homes in a subdivision.

Like many contractors, he inhaled asbestos by working with products that contained the fiber. Asbestos was used in spackling paste to fill holes and the paste used for popcorn ceilings.

Plaintiff case: Aubin's attorneys argued asbestos fibers made their way into his lungs and peritoneum, a thin sheath covering abdominal organs, and caused the development of cancerous cells. Half of those with his condition die within five years.

They blamed companies that produced the home-building products: Georgia



A.M. HOLT

Juan P. Bauta II said their client's peritoneal mesothelioma was caused by Union Carbide asbestos products that didn't carry warning labels.

Pacific, Johns-Manville, Kaiser Gypsum, Philip Carey, Premix Marbletite, Thompson Hayward Chemical and U.S. Gypsum. Through discovery, they fixed their sites on Union Carbide, which supplied all the others with asbestos mined in California.

The chemical company had not placed warnings on any of its products containing asbestos despite its own laboratory tests conducted in the 1930s, which showed the dangers of asbestos exposure. Union Carbide also dismissed the concerns of worried customers who called when the use of asbestos was questioned publicly in the early 1970s.

The attorneys pointed to decades-old

internal memos showing Union Carbide's medical director and others knew of the dangers of asbestos. One document showed how its marketing division was ordered to simply defuse customer worries. They also noted Union Carbide policies forced employees who handled asbestos to take precautionary steps to shield themselves from exposure.

Aubin's lawyers argued Union Carbide had a duty to warn him and others about the asbestos, which they argued was also defective — even when used as intended, it was still unsafe.

Defense case: Union Carbide attorneys argued its soft, fibrous, white chrysotile asbestos did not cause Aubin's type of mesothelioma.

They also argued the company had no duty to place warning labels on its products or warn consumers because the building supply manufacturers had been told about the health concerns.

Union Carbide's legal counsel also stated the company knew exposure could cause disease, but it didn't know how much exposure would be dangerous.

Outcome: In the weeks before trial, Aubin reached confidential settlements with several manufacturers including Georgia Pacific, Kaiser Gypsum and Premix. Although a jury found several manufacturers partly responsible, Union Carbide, the only defendant to go to trial, was blamed for the largest share at 46 percent. The jury awarded Aubin \$14.19 million, of which Union Carbide was directed to pay \$6.66 million based on the jury's liability split.

Quote: "Somebody had to warn Bill Aubin. Nobody did. They all chose not to," Bauta said.

Post-verdict: Union Carbide attorneys have filed a motion for a new trial.

— Jose Pagliery